IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 93 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJENDRABHAI PUNABHAI CHAUDHARY (PATEL)

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 93 of 2001

MR ASHISH M DAGLI for Petitioner No. 1

Mr.K.G.Sheth, Asst.PUBLIC PROSECUTOR for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2-3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/06/2001

ORAL JUDGEMENT

1. The present revision application has been filed by the applicant abovenamed, who was the original informant in Sessions Case No.3/99, pending before the Learned Additional Sessions Judge at Gandhinagar.

2. The present applicant submitted an application before the said court during pendency of trial for conversion of charge. The charge was framed for an offence punishable under section 324 IPC. The said application was filed before the trial court stating that the concerned accused person had used deadly weapon, i.e. Dharia, and had caused grievous hurt. It was also the case of the applicant before the trial court that a fracture was caused to the injured and, therefore, when the grievous hurt was caused by deadly weapon, the offence would be one punishable under section 326 IPC and not one punishable under section 324 IPC and, therefore, the charge for the offence punishable under section 326 IPC should be added.

3. After hearing the learned advocates for parties, the trial court dismissed the said application by order dated 11.1.2001, mainly, on the ground that the evidence had already been concluded and the application was filed very late. It was also found by the trial court that there was no reason for amending the charge and consequently the said application was dismissed by the learned trial judge.

4. Feeling aggrieved by the said order of the trial court, the petitioner has preferred the present revision application before this court.

5. It has been mainly contended that though the offence was one punishable under section 326 IPC, the charge has not been amended and, therefore, the order of the trial court is, ex-facie, illegal. It is, therefore, prayed that the present revision application be allowed, and the order of the trial court be set aside, and the trial court be directed to frame the charge of offence punishable under section 326 IPC, and to proceed ahead with the trial after amending the charge as aforesaid.

6. Notice was issued at the first instance and the Rule was issued thereafter. Mr.K.G.Sheth, learned APP appeared on behalf of the State at the relevant point of time and Mr.A.J.Shah appeared on behalf of the contesting respondent Nos 2 & 3 who are original accused before the trial court and opposed this revision application when the arguments were advanced by the learned advocates for the parties.

7. The learned Addl.Public Prosecutor as well as the learned advocate for respondents have strongly opposed this application stating that the case before the Sessions Court was a chargesheeted case and, therefore,

the present applicant had no locus standi to file an application for amending the charge before the trial court, and when the application was dismissed he does not have any locus standi to challenge the said order before this Court.

8. As against the above, the learned advocate for the applicant has contended that any person can come before this court in revision with respect to the illegality committed by the trial court and, therefore, the plea of locus standi does not arise.

9. In support of his argument, the learned advocate for the applicant has relied upon the decision in the matter of DASAUNDHA SINGH vs LACHHMAN SING & ORS reported in AIR 1929 Lahore 127(1) wherein it has been observed that "a petition, that a charge has been improperly framed and that it should be changed to one another need not necessarily be made by the Public Prosecutor or with his consent."

10. Firstly, the aforesaid decision is of another High Court and not of this High Court. Secondly, considering the development in law with respect to locus standi of a private complainant or informant in a police chargesheeted case, it would not be possible to follow the principle laid down in the aforesaid decision.

11. Another decision of this Court can be gathered from the matter of K.C.SAXENA vs VIRBHADRASINHJI K.GOHEL reported in 1985 GLH 289 wherein it has been observed by this Court that" the Magistrate has to frame the charge if he comes to conclusion that there is ground for presuming that the accused had committed offence." Here, the position is little different, i.e. that the learned Additional Sessions Judge has found that there is no case for amending the charge.

12. We can also refer to the decision of this Court in the matter of PATEL VARYABHAI JESANGDAS vs STATE OF GUJARAT reported in 1986(1) GLR 538 wherein it has been observed that " a private person engaging a lawyer can prosecute a person under the direction of public prosecutor, but can not continue the prosecution." It is also further observed that the Public Prosecutor or the Assistant Public Prosecutor would be in charge and conduct of the prosecution".

13. In another decision of this court, in the matter of BHANJIKHAN JAHAJIKHAN MALEK vs ABDULMUNIR K.MAHESANIA

& ORS reported in 1992 Cr.L.R (Guj) 428 it has been observed that "since the cognizance of the case is taken by the trial court on the basis of report submitted by the investigation officer under section 156(3) of the Code, the complainant or his advocate has no right to be in charge of the conduct of the case except the limited rights as contemplated under section 301(2) of the Code". It is further observed that "the Court has not taken cognizance on the basis of the complaint filed by the complainant and that the cognizance is taken by the trial court on the basis of the report of the investigation ooficer under section 156(3) of the Code, it can never be said that the case is instituted on a complaint filed by the applicant". It is also observed that "in the facts and circumstances, this court has no hesitation in finding that the conclusion of the trial court is fully justified". In this case also the complainant has very limited right in a police chargesheeted case.

14. Therefore, in the present case also considering the case law of this Court, the original informant has no locus-standi to be in charge and conduct of the trial. Therefore, he had no locus-standi to bring out any application for orders before the trial Court. Only the course left out to the original informant was to draw the attention of the Public Prosecutor in chaarge of the case and request him to make submissions. Instead of so doing, the present petitioner himself submitted an application for amending the charge which was strongly objected to by the learned Public Prosecutor in charge of the prosecution.

15. In any view of the matter, when the present petitioner had no locus-standi to file such application before the trial court, the order going against him can not be challenged by him before this Court. If the present application is entertained at the instance of the present applicant, who is the original informant, then it would be indirectly encouraging an illegal process and therefore when the petitioner had no locus standi to file an application before the trial court, he can not have locus standi to file the revision application against the order rejecting his application. It is also true that the application of the petitioner herein has not yet been disposed of by the trial court on the ground that the petitioner did not have locus standi to submit the said application. Nevertheless the things are undisputed according to which the petitioer had filed the application without locus standi and the order passed on his application is being challenged before this Court. In that view of the matter it is not open to the

petitioner to challenge the said order before this Court.

16. It is also to be considered that the learned trial judge has also considered the fact that the trial was virtually over when the aforesaid application was submitted. It is also true that the application is for amending the charge may be filed even at a late stage, but that does not mean that the applciation should be filed at a late stage, and no reason appears to have been assigned for late submission of application. When all the witnesses have been examined and thereafter application is submitted for amending the charge, the trial court would be required to recall the witnesses already examined after amendment of the charge. This would amount almost to a de novo trial. Looking to the above circumstances also this is not a fit case wherein this Court should exercise its revisional jurisdiction under section 397 of the Code.

17. It is to be considered that the applicant can not even argue the matter before this court on merits. The learned advocate for the applicant submitted that the applicant had made efforts to get appointed Special Public Prosecutor to conduct the aforesaid trial, but the Government has not appointed Special Public Prosecutor. It may be open to the applicant to persuade the State Government for such appointment. In case a Special Public Prosecutor is appointed, the order passed by the learned Additional Sessions Judge may not come in his way if the Special Public Prosecutor chooses to file a fresh application.

18. In the above view of the matter, I am of the opinion that this is not a fit case to allow this revision application filed at the instance of original informant. In the facts and circumstances, this revision application is rejected. Rule is discharged.

29.6.2001 (D.P.BUCH,J)
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